

## § 802.50

## 16 CFR Ch. I (1–1–10 Edition)

§ 801.40 are exempt from these requirements under section 7A(c)(8), any other contributor in the formation which is subject to the act and not exempt under section 7A(c)(8) need not file a Notification and Report Form, provided that no less than 30 days prior to the date of consummation any such contributor claiming this exemption has submitted an affidavit to the Federal Trade Commission and to the Assistant Attorney General stating its good faith intention to make the proposed acquisition and asserting the applicability of this exemption.

(b) Persons relieved of the requirement to file a Notification and Report Form pursuant to paragraph (a) of this section remain subject to all other provisions of the act and these rules.

[48 FR 34436, July 29, 1983]

### § 802.50 Acquisitions of foreign assets.

(a) The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million (as adjusted) during the acquired person's most recent fiscal year.

(b) Where the foreign assets being acquired exceed the threshold in paragraph (a) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million (as adjusted) in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than \$110 million (as adjusted); and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

*Example to § 802.50:* 1. Assume that "A" and "B" are both U.S. persons. "A" proposes selling to "B" a manufacturing plant located abroad. Sales in or into the United States attributable to the plant totaled \$13 million in

the most recent fiscal year. The transaction is exempt under this paragraph (a) of this section.

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant, when combined with the sales into the United States of the first plant, totaled in excess of \$50 million (as adjusted) in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" held by "B" as a result of the second acquisition (see § 801.13(b)(2) of this chapter). Since the total sales in or into the United States exceed \$50 million (as adjusted), the acquisition of the second plant would not be exempt under this paragraph (a) of this section.

3. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of in excess of \$110 million (as adjusted). If "A" acquires only foreign assets of "B," and if those assets generated \$50 million (as adjusted) or less in sales in or into the United States, the transaction is exempt.

4. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States and assets located in the United States of less than \$110 million (as adjusted). If "A" acquires only foreign assets of "B," and those assets generated in excess of \$50 million (as adjusted) in sales in or into the United States during the most recent fiscal year, the transaction is exempt from reporting if the assets are valued at \$200 million (as adjusted) or less, but is reportable if valued at greater than \$200 million (as adjusted).

[67 FR 11903, Mar. 18, 2002, as amended at 70 FR 4995, Jan. 31, 2005]

### § 802.51 Acquisitions of voting securities of a foreign issuer.

(a) *By U.S. persons.* (1) The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million (as adjusted); or made aggregate sales in or into the United States of over \$50 million (as adjusted) in its most recent fiscal year.

(2) If interests in multiple foreign issuers are being acquired from the

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same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million (as adjusted) limitation is exceeded.

(b) *By foreign persons.* (1) The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million (as adjusted); or made aggregate sales in or into the United States of over \$50 million (as adjusted) in its most recent fiscal year.

(2) If controlling interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million (as adjusted) limitation is exceeded.

(c) Where a foreign issuer whose securities are being acquired exceeds the threshold in paragraph (b)(1) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million (as adjusted) in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of this chapter) are less than \$110 million (as adjusted); and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

*Example to §802.51 1.* “A,” a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of in excess of 50 million (as

adjusted) in the most recent fiscal year. The transaction is not exempt under this section.

2. Assume that “A” and “B” are foreign persons with aggregate sales in or into the United States in excess of \$110 million (as adjusted), and that “A” is acquiring 100% of the voting securities of “B.” Included within “B” is U.S. issuer C, whose total U.S. assets are valued in excess of \$50 million (as adjusted). Since “A” will be acquiring control of an issuer, C, with total U.S. assets of more than \$50 million (as adjusted), and the parties’ aggregate sales in or into the U.S. in the relevant time period exceed \$110 million (as adjusted), the acquisition is not exempt under this section.

3. “A,” a foreign person, intends to acquire 100 percent of the voting securities of two wholly owned subsidiaries of “B” for a total of in excess of \$50 million (as adjusted). BSUB1 is a foreign issuer with less than \$50 million (as adjusted) in sales into the U.S. in its most recent fiscal year and with assets of less than \$50 million (as adjusted) located in the U.S. Less than \$50 million (as adjusted) of the acquisition price has been allocated to BSUB1. BSUB2 is a U.S. issuer with more than \$50 million (as adjusted) in U.S. sales and more than \$50 million (as adjusted) in assets located in the U.S. Less than \$50 million (as adjusted) of the acquisition price is allocated to BSUB2. Since BSUB1 does not exceed the \$50 million (as adjusted) limitation for U.S. sales or assets in §802.51(b), its voting securities are not held as a result of the acquisition (see §801.15(b) of this chapter). Since the acquisition price for BSUB2 alone would not result in “A” holding in excess of \$50 million (as adjusted) of voting securities of the acquired person, the transaction is non-reportable in its entirety. Note that the U.S. sales and assets of BSUB1 are not aggregated with those of BSUB2 for purposes of determining whether the limitations in paragraph (b) of this section are exceeded. If BSUB2 were also a foreign issuer, such aggregation would be required under paragraph (b)(2) of this section, and the transaction in its entirety would be reportable.

[67 FR 11904, Mar. 18, 2002; 67 FR 13716, Mar. 26, 2002, as amended at 70 FR 4996, Jan. 31, 2005]

### § 802.52 Acquisitions by or from foreign governmental corporations.

An acquisition shall be exempt from the requirements of the act if:

(a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and

(b) The acquisition is of assets located within that foreign state or of